

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

CHIRON WATKINS,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:16-CV-168
(GROH)**

MACY'S DISTRIBUTION CENTER,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court for consideration of a Report and Recommendation ("R&R") issued by United States Magistrate Judge Robert W. Trumble. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of an R&R. On February 14, 2017, Magistrate Judge Trumble issued his R&R, recommending that this Court dismiss without prejudice the Plaintiff's complaint and deny as moot the application to proceed without prepayment of fees.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

In this case, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the same. The R&R was initially sent to the Plaintiff by certified mail, return receipt requested, on February 14, 2017. On March 9, 2017, the R&R was returned to the Court as undeliverable because the Plaintiff did not claim it within the required time period. ECF No. 6. The R&R was resent to the Plaintiff by certified mail, return receipt requested, on March 14, 2017. On April 6, 2017, the R&R was again returned as undeliverable because the Plaintiff did not claim it within the required time period. ECF No. 7. To date, no objections have been filed and thus the Court will review the R&R for clear error.

Upon examination of the materials in this case, the Court finds that it lacks subject matter jurisdiction. Specifically, the Plaintiff does not adequately plead an amount in controversy in excess of \$75,000.00. At best, the Plaintiff alleges damages totaling less than \$1,000.00—an amount well below the required amount for diversity jurisdiction.

Accordingly, upon review, and finding no error, the Court **ORDERS** Magistrate Judge Trumble's Report and Recommendation [ECF No. 5] **ADOPTED** for the reasons more fully stated therein. The Court **DISMISSES** the Plaintiff's complaint [ECF No. 1] **WITHOUT PREJUDICE** and **DENIES** the application to proceed without prepayment of fees [ECF No. 2] **AS MOOT**.

The Court **DIRECTS** the Clerk to strike this case from the active docket and transmit a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested.

DATED: April 25, 2017



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE